

TEXAS STATE COMMISSION ON JUDICIAL CONDUCT



COMMISSION OPERATIONAL GUIDELINES

(UPDATED OCTOBER 13, 2022)

MISSION STATEMENT

The mission of the State Commission on Judicial Conduct is to protect the public, promote public confidence in the integrity, independence, competence, and impartiality of the judiciary, and encourage judges to maintain high standards of conduct both on and off the bench.

The Commission accomplishes this mission with a thorough and unbiased investigation of allegations of judicial misconduct or incapacity. In cases where a judge is found to have engaged in misconduct or to be permanently incapacitated, the Texas Constitution authorizes the Commission to take appropriate disciplinary action, including issuing sanctions, censures, suspensions, or recommendations for removal from office.

INTRODUCTION

An independent and honorable judiciary is indispensable to justice in our society. Since the Commission is charged with maintaining the integrity and independence of the judiciary, its members should personally observe the highest standards of ethical conduct in the performance of their responsibilities. The Code does not confer any substantive or procedural due process rights, or create a separate basis for civil liability or criminal prosecution.

GENERAL POWERS OF THE COMMISSION

Section 33.021 of the Texas Government Code provides that the Commission may:

1. design and use a seal;
2. employ persons that it considers necessary to carry out the duties and powers of the Commission;
3. employ special counsel as it considers necessary;
4. arrange for attendance of witnesses;
5. arrange for and compensate expert witnesses and reporters; and
6. pay from its available funds the reasonably necessary expenses of carrying out its duties under the constitution, including providing compensation to special masters.

ORIENTATION

When a new member is appointed to the Commission, that member is required to attend an orientation session conducted by the Executive Director and/or Commission staff. All new members will receive a packet of information, including information regarding the requirements of office, as well as the information required by statute.

Section 33.0043 of the Texas Government Code states that new members shall complete a training program that provides information regarding the following:

1. the legislation that created the commission;
2. the programs operated by the commission;
3. the role and functions of the commission;
4. the rules of the commission with an emphasis on the rules that relate to disciplinary and investigatory authority;
5. the current budget for the commission;
6. the results of the most recent formal audit of the commission;
7. the requirements of laws relating to public officials, including conflict-of-interest laws; and
8. any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

A new member appointed to the Commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

ATTENDANCE

If a member fails to attend at least 2/3 (4 out of 6) of the Commission hearings or meetings held each year, the Chair of the Commission shall report such fact to the appointing authority for that member.

MEDIA RELATIONS

Commission members should not communicate on behalf of the Commission with the media regarding Commission business except as provided in this Handbook. In order to provide an accurate and consistent message to the public, media inquiries regarding Commission matters are to be handled only by the Executive Director, the Chair of the Commission, or the Commission members designated by the Chair.

Except as specifically authorized by the Chair of the Commission, any comments by the Executive Director to the media regarding Commission business shall be limited to statements of fact concerning the provisions of the Texas Code of Judicial Conduct, other statutes, codes and guidelines governing the operations of the Commission, written Commission policies and procedures and such other objectively verifiable matters of public record that are reasonably calculated to assist the media in understanding the proper operations of the Commission. The Executive Director shall not make any subjective comments to the media expressing any legal opinions or judgments as to the merits of any complaint or other matter before the Commission, statements speculating or opining as to the likely outcome or disposition by the Commission as to

any matter before the Commission, the impact, consequence or result of any action taken by the Commission, any Commission deliberations or any other comments expressing an evaluation, opinion or judgment regarding any Commission matter without the prior consultation and approval of the Chair of the Commission.

GROUNDS FOR REMOVAL

Section 33.0041. REMOVAL OF COMMISSION MEMBER; NOTIFICATION PROCEDURES: If the executive director has knowledge that a potential ground for removal of a commission member exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor, the supreme court, the state bar, and the attorney general that a potential ground for removal exists. IF the potential ground for removal involves the presiding officer, the executive director shall notify the next highest-ranking officer of the commission, who shall then notify the governor, the supreme court, the state bar, and the attorney general that a potential ground for removal exists. (Added by Acts 2001, 77th Leg., ch. 917, Sec 5, eff. Sept. 1, 2001)

Pursuant to Section 33.0041 of the Texas Government Code, any of the following conduct shall constitute violations of the Commission’s ethics policies and grounds for removal of a Commission member:

1. Failure to attend at least 2/3 of Commission meetings within a twelve-month period;
2. Intentional or reckless disclosure of confidential or privileged information;
3. Persistent intemperate or abusive behavior toward Commission members, Commission staff, Respondent Judges, Respondent Counsel, or others with whom the member deals in an official capacity;
4. Willful or persistent misconduct that results in public discipline by the Commission, the State Bar of Texas, or that casts public discredit upon the Commission;
5. Conviction of a felony or a misdemeanor involving official misconduct or a crime of moral turpitude;
6. Willful or persistent misuse of state funds in the course of service as a Commission member;
7. Willful disclosure to non-members and/or non-Commission staff of confidential Commission complaints, proceedings, information, papers, deliberations; or
8. Willful violation of an Ethics Policy described in this Section V of this Handbook.

MEETINGS

The State Commission on Judicial Conduct is required to conduct a meeting, in order to take any action on any issue. This section defines the mechanism for conducting commission meetings.

Unless otherwise provided for by the Constitution of the United States, the Constitution of the State of Texas, or these Rules, the current edition of *Robert’s Rules of Order Newly Revised*, which

is hereby adopted by reference, shall be the parliamentary authority governing all meetings of the State Commission on Judicial Conduct.

The use of proxies or proxy voting is hereby prohibited in all State Commission on Judicial Conduct Meetings and Proceedings.

Regular Meetings:

The commission will meet 6 times a year for Regular Meetings, and the body will annually set the schedule of the regular meetings, which will satisfy the notice requirement for regular meetings. Updates to regular meeting scheduling will be published in the regular meeting agenda and do not require additional notice.

Commissioners are allowed to participate in all meetings remotely and vote remotely, as specified via the Chairman during the meeting, in all actions except officer elections.

Emergency Meetings:

In the event of a stated emergency, as declared by the Chairman, or a Majority of the Executive Committee, an Emergency Meeting may be conducted through the use of electronic meeting services designated by the Chairman or Majority of Executive Committee. In the event an Executive Committee Meeting is held electronically, the electronic meeting must allow for the real time sharing and viewing of documents, including the current motion, any amendments to that motion, and any reports or evidence that the Committee considers.

A meeting for this purpose shall be called by written notice via E-mail to each Commissioner no less than two (2) days prior to the meeting. The meeting notice will include an agenda for the emergency meeting.

Motions to suspend the rules, with the intent to conduct an emergency meeting on less notice or without a written agenda will carry only with a vote of 8 members at the start of the Emergency Meeting.

Notice of any meeting conducted via e-mail, must specify a beginning and end to the meeting and provide opportunity to participate by voting during the meeting. The duration of said meeting shall not be less than 24 hours unless all commissioners have cast a vote.

Commissioner Initiated Meeting Procedure:

If the Chairman, or a Majority of the Executive Committee do not call an Emergency Meeting, a request from any eight (8) commissioners, can call for a Commissioner Initiated Emergency Meeting. A Commissioner Initiated Emergency Meeting requires five (5) days' notice. Calling such a meeting via e-mail is allowable. The agenda for the meeting must be specified before the meeting notice is issued at the direction of the Commissioner who made the motion for the meeting All Emergency procedures as described in these rules

apply, the Commission Chairman, or member designated by the Chair, will be the Chair of the Commissioner Initiated meeting.

ELECTION OF OFFICERS

The protocol for election of Commission officers shall be as follows:

1. A Chair, Vice-Chair and Secretary will be elected annually at the first meeting of the fiscal year (October) by nomination and majority vote of the members present at the meeting.
2. If there is an objection to the nomination and election process described above, the default method for election shall be by secret ballot.
3. The members may nominate and vote on a slate of officers; however, if there is an objection to this method of election, the default method shall be to vote on each office separately beginning with the Chair, followed by the Vice-Chair and Secretary positions subsequently in that order, with the member receiving the majority of the votes for each office having been elected to that office.
4. A Commissioner must be present in-person in order to vote and no electronic, proxy, or absentee votes will be counted. All candidates for office must also be present in-person in order to be nominated.
5. The Chair shall not serve for more than two consecutive one-year terms. The term of office will be November 20 through November 19 of the next year.
6. If the Chair, Vice-Chair, or Secretary resigns or otherwise becomes disqualified from holding such office prior to the expiration of the term, the Commission shall hold an interim election for purposes of selecting a replacement to fill the unexpired term of the outgoing member, following the same procedures described above.
7. The Commission believes that it is in its best interest to avoid partisanship. Therefore, lobbying and campaigning for office is discouraged as being contrary to the spirit that the Commission wishes to promote in itself and in the judiciary.

COMMISSION COMPLAINTS BASED ON MEDIA REPORTS

Staff should not initiate complaints in the name of the Commission based on newspaper articles or media reports without first presenting the articles to the Commission for approval. Staff will present copies of articles for consideration to the Commissioners at a meeting. The Commissioners will review the articles and vote to initiate or not initiate a “Commission” complaint against the judge(s) identified in the report.

Case Management Operating Procedures:

1) DOCKETING

1.01 Receipt of Complaint

All complaints received shall be promptly assigned a unique docket number. Staff docketing the complaint will determine whether it is proper in its form as provided in 2.01. Any commission-initiated investigation shall also be given a docket number.

1.02 Tracking and Supplementation

Any subsequent proceedings shall be conducted in connection with that number and any additional grounds of investigation identified in course of investigation may be included under that number.

1.03 Consolidation

On order of the Commission, dockets involving the same judge may be consolidated for investigation, disposition, or reconsideration.

2) SCREENING AND PRELIMINARY INVESTIGATION

2.01 Form Review and Disposition

Promptly after docketing, staff shall determine whether a complaint is sworn and otherwise proper in its form. If the complaint is unsworn or otherwise deficient as a matter of form, staff may advise the complainant of the defect within 10 days of docketing, should the complaint otherwise appear potentially meritorious to staff. Regardless, all complaints will be assigned either to the “Item of Interest” docket for consideration as to whether to investigate as a commission-initiated matter, or to the Administrative Dismissal Docket should the complaint otherwise appear unfounded. The complaint shall be presented at the next regularly scheduled commission meeting, should the complaint be received at least 30 days prior thereto.

2.02 Preliminary Investigation of Complaint

If the complaint is proper as to form, staff shall promptly determine from its face and from any other source deemed expedient, whether it presents a potentially meritorious basis for commission action.

All docketed matters received at least 30 days prior to the next regularly scheduled meeting, should be presented at that meeting with a recommendation or proposal for debate as to whether to: 1) dismiss for substance, 2) conduct further, plenary factual investigation as necessary to determine potential merit or 3) submit to the commission for a hearing with the judge at the next meeting. Staff may identify any matter as an emergency to the Chair.

2.03 Commission Initiated

The Commission may initiate a complaint based on (1) an unsworn, anonymous, or otherwise deficient complaint; (2) public source reporting; or (3) any other information deemed appropriate by the commission. Upon such initiation, the complaint will be assigned a docket number, unless one has been previously assigned pursuant to paragraphs 1.01 and 2.01 and screened for preliminary investigation under section 2.02 for presentation at the next regular commission meeting, unless the Commission votes for a different disposition.

3) INVESTIGATION

3.01 Plenary Investigation and Discovery

All matters recommended for plenary investigation, and approved for such by the Commission, shall be promptly assigned to and investigated by staff with the staff member responsible being reflected in the tracking and reporting system. The complainant judge will be notified and given an opportunity to answer such questions as warranted the investigation. Should the judge fail to respond, or timely cooperate, with the request to provide information, staff will inform the executive director who may, with or without consultation with the Executive Committee, either authorize the subpoena or refer the question to the full Commission at the next regular meeting (or by other more immediate means) for additional proceedings pursuant to section 33.001(b)(6) of the Government Code.

3.02 Plenary Investigation

Should a matter not warrant dismissal and require plenary staff investigation; staff should prepare and complete the investigation within 90 days of the assignment of the matter for plenary investigation pursuant to Paragraph 2.02. The matter will then be scheduled for final disposition at the next regularly scheduled commission meeting following the 90-day investigation, (as reflected in the tracking system) unless the Commission deems other scheduling is warranted, necessary or proper.

3.03 Expedited Disposition

Following preliminary investigation, the Commission will determine where dismissal is proper and, if not whether plenary investigation is necessary, pursuant to Paragraph 2.02. Where a complaint is advanced as potentially meritorious and not requiring plenary investigation, the judge shall be promptly informed of the complaint and invited to appear at the next regularly scheduled meeting, unless the Commission deems other scheduling to be warranted.

4) NOTICE OF HEARINGS, CONTINUANCES, AND DISPOSITION

4.01 Notice of hearing and commission actions.

A Judge subject to a complaint is entitled to notice of the complaint at least ten (10) business days prior to a hearing (Statutory). Any decision made at the hearing will be shared with the judge and withheld from public posting for ten (10) business days, absent a majority vote to issue the decision at an earlier time. The complainant, if any, will be promptly notified of the decision as required by law. If, at any time prior to the public release of a decision imposing a sanction, a judge subject to sanction seeks revision or correction, a majority of the commission, on motion and second of any member who had voted in favor of the sanction, may reconsider the findings or the sanction. Any such motion and sanction may be conveyed to the Commission members by email. The commission is not required to grant revision or correction and the filing of any such motion will not affect deadlines to seek review. In the event a sanction is revised, the judge and the complainant will be promptly notified, and the revised, final sanction will be released within 3 business days, unless a majority of the Commission directs otherwise.

4.02 Notice to Commission Members Prior to Hearing or Actions

Commission members will be notified of any hearing necessary to commission action not less than 7 days prior to the hearing. In case of emergency, the Chair, in consultation with the executive committee, may allow for a hearing by videoconference or email. A majority of the Commission members may direct the mode of meeting to include videoconference or email as the majority directs. The agenda for regular meetings shall be shared with the Commission members not later than 14 days prior to scheduled meeting. The agenda for any interim or emergency meetings shall be provided to the full commission as promptly as practicable. Any matter that, in the opinion of a majority of executive committee, requires action on less than 7 days may be acted upon by the executive committee (1) where the matter requires immediate action; and (2) where, despite notice, a quorum cannot be formed. In either case, the full Commission shall be immediately notified of the action taken, the reason for acting in advance of the next meeting, and of the vote with any member of the Commission being entitled to call for reconsideration and, on second of such motion, a suspension of the quorum rules to permit a majority to consist of not less than 5 commissioners. Actions taken by the Chair or the executive committee in conflict with this provision, if communicated externally shall be considered valid, unless overturned as provided herein, but shall be considered ultra vires for internal purposes and if undertaken twice shall result in suspension of the executive committee.

4.03 Continuances

Continuances will not be available as a matter of right, but only on a showing of good cause with the hearing rescheduled to another date either in person or by electronic means. All requests for continuances received by staff shall be forwarded to the Executive Committee, which is the primary body assigned for reviewing Continuance Requests. If the majority of the Executive Committee wish to grant a continuance for one (1) Regular Meeting, they are empowered to do so. If a Judge, or respondent, requests an additional continuance, or a continuance request is made that extends beyond the next scheduled Regular Meeting, that request shall be presented to the full commission for consideration.

5) TRACKING

5.01 All Matters Received or Opened on Commission Initiative to be Tracked

All docketed matters shall be tracked by cause number. Matters pending screening, set for proposed dismissal, presentation as a matter of interest, and plenary or expedited disposition shall be separately tracked with the original date of submission and last date of presentation to the commission recorded. Tracking shall be available to all staff and commission members.

6) FORMAL PROCEEDINGS AND DEFENSE OF COMMISSION DECISIONS IN INFORMAL PROCEEDINGS

6.01 Formal Proceedings

Matters referred for formal proceedings will be a matter of priority for the staff and should be prepared and referred not later than 14 days following a decision to refer and should be scheduled for hearing not later than 60 days thereafter, unless the Commission votes to alter the schedule.

6.02 Defense of Informal Commission Decisions

Matters subject to external review, other than litigation brought against the Commission or its individual members, shall be assigned to external counsel absent a decision of the Commission to the contrary. Commission staff involved in either the preliminary or plenary investigation (if any) should be available to assist in the defense as necessary.

7) EX PARTE COMMUNICATIONS

7.01 Communications with subject judge

Any commissioner who receives or participates in communications with a subject judge, or a person likely to be in communication with the subject judge, about a matter under investigation shall immediately disclose to the chair the fact of that communication, and its substance. The Chair will then present the matter to the executive committee for appropriate action.

INFORMAL PROCEEDINGS

The procedures governing Commission investigations and informal hearings are described in Article 5, Section 1-a of the Texas Constitution, Sections 33.022, *et seq.* of the Texas Government Code and in the *Procedural Rules for the Removal or Retirement of Judges*.

Commission staff shall comply with established procedures regarding investigations and the handling of informal hearings. Staff shall assist the Commission at meetings and during hearings and deliberations as directed by the Chair. The Executive Director, or his or her designee, shall provide legal advice to the Commission.

PROVIDING DOCUMENTS TO RESPONDENT JUDGES

Staff should provide respondent judges with a copy of all documents, written or recorded witness statements, and other records (except attorney-client or otherwise privileged documents) to be considered by the Commission at an appearance prior to the judge's appearance before the Commission. The judge's documents will be bate-stamped to correspond with the bate-stamped pages before the Commissioners. If documents are being withheld from the judge because of a claimed privilege, both the judge and the Commission will be advised of this fact.

With regard to attorney-client or otherwise privileged documents, staff will designate in agenda and appearance memos which documents are to be so-considered "Exhibit X" and stamp those exhibits individually with the word "Privileged." These will include all legal research performed by staff and not provided by the respondent judge, the complainant, or a witness; confidential documents received from law enforcement, including reports from the FBI; memoranda of law, briefs, and other letter opinions.

WRITTEN WITNESS STATEMENTS

Staff should attempt to obtain (1) permission from a witness to allow his/her oral statement to be shared with the judge in the event that a full investigation is deemed appropriate or (2) a written statement from a witness, especially from judges or attorneys, in those cases where the respondent judge has denied under oath the allegations or has disputed the version of events presented by the witness. Affidavits or sworn statements are helpful, but not required.

If a witness gives the investigator permission to share the oral statement with the judge, the investigator should take meticulous and careful notes of the conversation and repeat the witness's statements back to him/her to confirm the accuracy of the information. After that exchange has occurred, the oral statement should be reduced to a written statement, identifying the time and date of the conversation; the identities of the witness and investigator; who initiated the contact; the fact that the witness was asked and gave permission to use the statement and confirmed its accuracy; the questions asked, and the answers given; and when the conversation ended.

If a written statement is obtained from the witness, or an oral statement is reduced to writing by the investigator as indicated above, it must be turned over to the judge prior to an appearance before the Commission so that he/she has an opportunity to respond.

If the witness refuses/declines to provide a written statement or allow staff to share an oral statement with the judge, staff will advise the Commission of this fact in the memo and will

probably recommend dismissal (for lack of evidence). The Commission can then vote on whether to dismiss or pull the case for further investigation, invite the judge, or issue a subpoena to compel the witness to testify.

In cases involving witnesses who request confidentiality, if the witness is unwilling or unable to waive confidentiality and the case depends on that witness's statement and the identity of the witness would be disclosed to the judge even if identifying information were redacted, staff should advise the Commission of this fact and recommend dismissal (for lack of evidence). The Commission can then vote on whether to dismiss or pull the case for further investigation, invite the judge, or issue a subpoena to compel the witness to testify.

DISMISSALS WITH CORRECTIVE ACTION OR WITH LETTER OF CAUTION

If deemed appropriate by the Executive Director, staff may make recommendations to the Commission that a case be dismissed based on the judge's corrective action or with a letter of caution in cases where the alleged misconduct appears to have violated an aspirational standard of conduct.

RECONSIDERATION OF SANCTION VOTE

Generally, any case may be reconsidered after a vote as long as the Commission meeting remains pending. Except for good cause, once the meeting concludes or is adjourned, a case may not be reconsidered. This policy is consistent with Robert's Rules of Order, which the Commission attempts to follow to the extent deemed practicable. The general rule is that all decisions should be final once the meeting concludes. Consistent with this general rule, respondent judges should not be notified of the outcome of any pending case(s) until after the meeting concludes or is adjourned.

COMMISSION COUNSEL

The procedures governing informal investigations and hearings regarding Commission complaints are detailed in Article 5, Section 1-a of the Texas Constitution, Sections 33.022, *et seq.* of the Texas Government Code and in the *Procedural Rules for the Removal or Retirement of Judges*.

In the event that the Commission presides over a public hearing during the course of a Formal Proceeding and requests the assistance of legal counsel during its deliberations, the Commission may request, under its authority to request such assistance pursuant to Section 33.030(a) of the Texas Government Code, the assistance of the Office of the Texas Attorney General to act as Commission Counsel, or advisor to the Commission, and provide such legal advice. The Commission may retain the services of outside counsel to serve as Commission Counsel or advisor to the Commission during the pendency of the Formal Proceeding.

UPDATES

Pursuant to Texas Government Code Sec. 33.039, these rules will be updated periodically. An organizational review will occur in the first regular meeting that will occur after a new Chair

takes office. During this organizational meeting, a simple majority can make updates. Other updates are allowed, but changes require a supermajority of nine (9) commissioners in order to make changes.

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